

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

JUN 15 2005

LARRY EUGENE YARBROUGH,

ROBERT D. DENNIS, CLERK
U.S. DIST. COURT, WESTERN DIST. OF OKLA.
BY D. DePuy

Petitioner,

v.

Case No. 99-632 L

CHARLES RAY, WARDEN,
DAVIS CORRECTIONAL FACILITY;
THE STATE OF OKLAHOMA, et al.,

Respondents.

**NOTICE OF
MOTION FOR RELIEF FROM JUDGMENT**

COMES NOW, Larry Yarbrough, the Petitioner herein, and moves this Honorable Court to take judicial notice of the Motion for Relief From Judgment being filed contemporaneously herewith.

Petitioner files his Motion for Relief from Judgment pursuant to Rule 60(b)(2), (6). The Court and Respondents should take note that this subsection is not subject to time limitations other than being filed within a "reasonable time." Additionally, the Motion is not subject to the successive petition rule as are those petitions filed pursuant to title 28 U.S.C. § 2254. See *Hamilton v. Newland*, 374 F.3d 822 (9th Cir. 2004).

The Petitioner hereby moves this Court to vacate the original judgment of dismissal pursuant to Rule 60(b) et seq. of the federal Rules of Civil Procedure. The judgments to be vacated are from

Petitioner's first and second habeas actions. See final orders attached.

The first habeas action (**Yarbrough v. Kaiser**, CIV-99-632-L (W.D.Okla. 1999)) was voluntarily withdrawn by Mr. Yarbrough because he acknowledged his failure to exhaust state remedies.

The second habeas action (**Yarbrough v. Ray**, CIV-01-1421-L (W.D.Okla. 2001)), was dismissed because of insufficient evidence being presented. Petitioner believes that if the newly discovered evidence had been available at the time of the previous habeas action, the final order would have been different, and Mr. Yarbrough's conviction would have been reversed.

Regarding the newly discovered evidence, Mr. Yarbrough has been in diligent pursuant of this evidence for the entire time of his incarceration. This evidence could not be discovered because the Honorable Susie Pritchett, Judge of the Kingfisher County District Court ordered the evidence sealed.

WHEREFORE, Mr. Yarbrough respectfully asks this Court to VACATE previous orders, and GRANT this Motion so that newly discovered evidence may be presented.

Respectfully submitted,



Larry Yarbrough 125215
Davis Correctional Facility
6888 East 133rd Road
Holdenville, OK 74848

CERTIFICATE OF MAILING

this is to certify that on this 13th day of June, 2005,
I caused to be mailed a true and correct copy of this instrument,
to:

Oklahoma Attorney General
112 State Capitol
2300 N. Lincoln Blvd.
Oklahoma City, OK 73105



Larry Yarbrough

VERIFICATION

This is to verify, under penalty of perjury, that the above
and foregoing is true to the best of my knowledge and belief.

Larry Yarbrough

